

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>MERCEDES LIRIANO, JACINTH SCOTT, DIANE ROBERTS, JASMINE DICKSON, and CHANTALE JOSEPH, on their own behalf,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">-against-</p> <p>NEW YORK CITY DEPARTMENT OF EDUCATION, and PATRICIA CATANIA, jointly and severally,</p> <p style="text-align: right;">Defendants.</p>	<p>X</p> <p>19 Civ. 11245 (LGS)(SLC)</p>
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<p>JOINT ESI PROTOCOL BETWEEN PLAINTIFFS AND DEFENDANT NEW YORK CITY DEPARTMENT OF EDUCATION</p>

JOINT ESI PROTOCOL

This Stipulation Regarding Production of Electronically Stored Information (“ESI Protocol”) shall govern the Plaintiffs and Defendant New York City Department of Education (“DOE”)(collectively, the “parties”), in the above-captioned case for the remainder of the discovery phase. The parties acknowledge that Defendant DOE has already searched for, reviewed, and produced ESI, and that this ESI Protocol is meant to apply to certain data DOE has already collected but not yet reviewed, Defendant Catania’s DOE Outlook calendar, Defendant DOE BlackBerries, iPad and computers as indicated below, and to several new custodians listed below not previously identified by Plaintiffs (“Additional Data”).

It is hereby stipulated by and between Plaintiffs and DOE, through their respective counsel, subject to the approval of the Court, as follows:

Nothing in this Protocol is intended to or shall serve to waive or limit a party’s right to review, object to the production of, withhold or redact documents, ESI or information (including metadata) for relevance and responsiveness, as permitted or required by state or federal statute,

or on the basis of privilege. Further, nothing contained herein is intended to serve to limit a party's right to make redactions to any documents consistent with Rule 5.2 of the Federal Rules of Civil Procedure.

Unless otherwise ordered by the court, the parties shall produce ESI in accordance with the annexed ESI Production Specifications (Exhibit A).

The parties recognize that the producing party is in the best position to determine how to search for, review, and produce its own ESI. *See The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 Sedona Conf. J. 1 (2018).

The parties agree that (1) the words "and" or "or" are Boolean connectors and are not themselves part of the search unless contained as a text string inside quotation marks; (2) search terms should be run without regard for specific capitalization; and (3) "MS 224" as indicated below should be run as "MS224" "M.S. 224" "MS 224" "I.S. 224" "IS224" and "07X224".

Once DOE has collected all the Additional Data outlined below, it will inform Plaintiffs of its estimated production timeline. Thereafter, if necessary, the parties may meet and confer to discuss the basis or bases for DOE's estimated timeline for production.

Additional Data:

DOE-Issued iPad used by Defendant Catania ("iPad")

- Date Range: December 2016-June 2019
- Search for ESI responsive to Plaintiffs' Second Set of Document Requests, including but not limited to Document Request 124.
- DOE's Blackberries used by defendant Catania while working at MS 224 ("BlackBerries")

- Date Range: December 2016-June 2019
- Search of text messages, including but not limited to BlackBerry Messenger, on BlackBerries for ESI responsive to Plaintiffs' Second Set of Document Requests, including but not limited to Document Request 124.
- Defendant DOE shall search the BlackBerries for personal emails of Defendant Catania held on the DOE devices. If any such emails are held on the DOE devices, the parties shall address the issue at that time. Plaintiffs reserve the right to seek personal email held on Defendant DOE devices.
- Defendant Catania's DOE Outlook Calendar
 - Date Range: December 2016-June 2019
 - Terms: Mercedes and observ*; Liriano and observ*; Jacinth and observ*; Scott and observ*; Diane and observ*; Roberts and observ*; Jasmine and observ*; Dickson and observ*; Chantale and observ*; Joseph and observ*
- DOE's laptop used by defendant Catania while working at MS 224 ("Laptop")
 - Date Range: December 2016-June 2019
 - Terms: all terms from Plaintiffs' Amended Document Request 124, regardless of specified custodian.
- DOE's desktop computer used by defendant Catania while working at MS 224 ("Desktop")
 - Date Range: December 2016-June 2019
 - Terms: all terms from Plaintiffs' Amended Document Request 124, regardless of specified custodian.

- Defendant Catania's audio recordings and video recordings: DOE agrees to search the BlackBerries, iPad, Desktop, and Laptop for such recordings, and if review of all such files is not unduly burdensome DOE will review them for responsiveness. If, however, DOE determines that review of all such files would create an undue burden, the parties can meet and confer about potential solutions including but not limited to cost-shifting.
- Nyree Dixon: Email in DOE account, to the extent they exist and/or are accessible.
 - Date Range: January 2018-July 2019
 - Terms: Catania; Mercedes; Liriano; Jacinth; Scott, Diane; Roberts; Jasmine; Dickson; Chantale; Joseph; "Reversion" and "MS 224"; "Stipulation" and "MS 224"; "Sharpton" and "MS 224"; "rac*" and "MS 224"; "discrim*" "MS 224"; "insensitiv*" and "MS 224"; "Parents" and "MS 224"; "retal*" and "MS 224"; "respect" and "MS 224"; "culture" and "MS 224"; "high profile" and "MS 224"; "black teachers" and "MS 224"; "protest" and "MS 224"; "rally" and "MS 224"; "demonstration" and "MS 224"; "NAN" and "MS 224"; "Sharpton" and "MS 224"; "National Action Network" and "MS 224"; "problem" and "MS 224"
 - If DOE assesses the time and expense of review associated with this search and determines it is unduly burdensome, the parties will meet and confer about potential solutions, including but not limited to cost-shifting.
- Maiysha Etienne: Email in DOE account, to the extent they exist and/or are accessible.
 - Date Range: January 2018-July 2019
 - Terms: Catania; Mercedes; Liriano; Jacinth; Scott, Diane; Roberts; Jasmine; Dickson; Chantale; Joseph; "Reversion" and "MS 224"; "Stipulation" and "MS 224"; "Sharpton" and "MS 224"; "rac*" and "MS 224"; "discrim*" "MS 224";

“insensitiv*” and “MS 224”; “Parents” and “MS 224”; “retal*” and “MS 224”;
“respect” and “MS 224”; “culture” and “MS 224”; “high profile” and “MS 224”;
“black teachers” and “MS 224”; “protest” and “MS 224”; “rally” and “MS 224”;
“demonstration” and “MS 224”; “NAN” and “MS 224”; “Sharpton” and “MS
224”; “National Action Network” and “MS 224”; “problem” and “MS 224”

- If DOE assesses the time and expense of review associated with this search and determines it is unduly burdensome, the parties will meet and confer about potential solutions, including but not limited to cost-shifting.
- Meisha Ross Porter: Email in DOE account, to the extent they exist and/or are accessible.
 - Date Range: January 2018-July 2019
 - Terms: Catania; Mercedes; Liriano; Jacinth; Scott, Diane; Roberts; Jasmine; Dickson; Chantale; Joseph; “Reversion” and “MS 224”; “Stipulation” and “MS 224”; “Sharpton” and “MS 224”; “rac*” and “MS 224”; “discrim*” “MS 224”; “insensitiv*” and “MS 224”; “Parents” and “MS 224”; “retal*” and “MS 224”; “respect” and “MS 224”; “culture” and “MS 224”; “high profile” and “MS 224”; “black teachers” and “MS 224”; “protest” and “MS 224”; “rally” and “MS 224”; “demonstration” and “MS 224”; “NAN” and “MS 224”; “Sharpton” and “MS 224”; “National Action Network” and “MS 224”; “problem” and “MS 224”
 - If DOE assesses the time and expense of review associated with this search and determines it is unduly burdensome, the parties will meet and confer about potential solutions, including but not limited to cost-shifting.
- Laurence Becker: Email in DOE account, to the extent they exist and/or are accessible.
 - Date Range: January 2018-July 2019

- Terms: Catania; Mercedes; Liriano; Jacinth; Scott, Diane; Roberts; Jasmine; Dickson; Chantale; Joseph; “Reversion” and “MS 224”; “Stipulation” and “MS 224”; “Sharpton” and “MS 224”; “rac*” and “MS 224”; “discrim*” and “MS 224”; “insensitiv*” and “MS 224”; “Parents” and “MS 224”; “retal*” and “MS 224”; “respect” and “MS 224”; “culture” and “MS 224”; “high profile” and “MS 224”; “black teachers” and “MS 224”; “protest” and “MS 224”; “rally” and “MS 224”; “demonstration” and “MS 224”; “NAN” and “MS 224”; “Sharpton” and “MS 224”; “National Action Network” and “MS 224”; “problem” and “MS 224”
- If DOE assesses the time and expense of review associated with this search and determines it is unduly burdensome, the parties will meet and confer about potential solutions, including but not limited to cost-shifting.
- Alan Lichtenstein: Email in DOE account, to the extent they exist and/or are accessible.
 - Date Range: January 2018 - December 2018
 - Terms: Catania; Mercedes; Liriano; Jacinth; Scott, Diane; Roberts; Jasmine; Dickson; Chantale; Joseph; “Reversion” and “MS 224”; “Stipulation” and “MS 224”; “protest” and “MS 224”; “Sharpton” and “MS 224”; “rac*” and “MS 224”; “discrim*” and “MS 224”; “insensitiv*” and “MS 224”; “Parents” and “MS 224”; “retal*” and “MS 224”; “respect” and “MS 224”; “culture” and “MS 224”; “high profile” and “MS 224”; “black teachers” and “MS 224”; “protest” and “MS 224”; “rally” and “MS 224”; “demonstration” and “MS 224”; “NAN” and “MS 224”; “Sharpton” and “MS 224”; “National Action Network” and “MS 224”; “problem” and “MS 224”; Superintendent and “MS 224”; Chancellor and “MS 224”; Carranza and “MS 224”; Cintron and “MS 224”; Meisha and “MS 224”; “Ross

Porter” and “MS 224”; Rafael and “MS 224”; Alvarez and “MS 224”; Elise and “MS 224”; Alvarez and “MS 224”; Nyree and “MS 224”; Dixon and “MS 224”; Etienne and “MS 224”; Maiysha and “MS 224”

- If DOE assesses the time and expense of review associated with this search and determines it is unduly burdensome, the parties will meet and confer about potential solutions, including but not limited to cost-shifting.

The producing party has the right to fully review its ESI for responsiveness, privilege, confidentiality, and personal identifying information (“PII”) prior to production of responsive, non-privileged documents. In addition, the producing party may use any appropriate tool or technology to conduct its review, including technology assisted review, as long as the review is conducted in a defensible manner.

The Parties have entered into a separate Stipulation and Protective Order that addresses, among other things, (i) the definitions of confidential material and protected material and their production, identification, and redaction; and (ii) the procedures by which the Parties may claw back documents and information disclosed in this action, as well as the circumstances under which disclosures in this action shall not waive the parties’ privileges, protections, and rights against disclosure (the “Clawback Agreement”).

Dated: New York, New York
July 21, 2021

MIRER, MAZZOCCHI & JULIEN

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/s/Ria Julien

Ria Julien

SO ORDERED 7/29/2021



SARAH L. CAVE
United States Magistrate Judge

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/s/Natalie Marcus

Natalie Marcus
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ESI Production Specifications as of 07/02/2020 – NATIVE PRODUCTION

If compliance with these specifications is not possible or would cause undue burden, the parties should meet and confer to discuss and confirm the format of production *prior* to collection, review, and production.¹

These specifications apply to production of documents referenced in the July 21, 2021 Joint ESI Protocol between Plaintiffs and NYC DOE.

General Specifications

All documents should be provided in their original native format with a link to the native file included in the **Native Link** field within the .DAT file. The file name of the native file should reflect the unique Bates number assigned to that document and the appropriate confidentiality designation, if any. For Example: Bates123456.XLSX or Bates123456 – Confidential.XLSX.

For each produced document, all associated text (extracted or OCR) should be provided in a text file named after the starting Bates number of the document. There should be one text file per document and a link to the text file should be included in the **Text Link** field within the .DAT file.

All associated metadata should be produced in a .DAT load file with standard Concordance delimiters. The included chart ("Requested Metadata Fields for ESI") contains the fields that should be provided in the .DAT file.

If any documents are produced as TIF images because they contain redactions or are being withheld in full (produced as a placeholder slip sheet as per the instructions below), a corresponding image load file must be provided in Opticon (Concordance Image) format.

If any documents that are produced as TIF images contain hidden content, tracked changes, revisions, comments, or notes, the documents should be imaged with such content viewable.

The folder structure of the deliverable should follow the below format:

- NYCPROD001 – top level directory which should be unique for every deliverable
 - DATA – subdirectory containing load files (.DAT & .OPT)
 - NATIVES – subdirectory containing native files

¹ If a different format is contemplated for particular document/data sources or types, the parties should meet and confer to discuss and confirm the format of production *prior* to production. For any social media, messages (e.g. SMS, MMS, iMessage, etc.), mobile phone information, data stored in cloud environments (e.g. Dropbox, Google Drive, One Drive, etc.), database, proprietary system productions, or any other file type not listed, the parties should meet and confer to discuss and confirm the format of production *prior* to collection, review, and production.

- IMAGES – subdirectory containing single page TIF images
- TEXT – subdirectory containing .txt files (extracted or OCR)

Format for Redacted Documents

Files requiring redactions should be converted and produced as redacted Bates-stamped, single page TIF images with associated text and metadata rather than in native format. If a child document (e.g., email attachment) is produced with redactions, then the full family of the redacted attachment must also be converted and only produced as Bates-stamped, single page images with associated text and metadata rather than in native format. If image production is not technically feasible for a particular file that requires redactions (e.g., for an Excel file that must be redacted), a copy of the native file with the appropriate portions replaced with “[REDACTED]” should be produced or if that is not feasible, the parties should meet and confer as to the best way to produce the file. For each document produced with redactions, the **Redaction Type** and **Privilege Type** fields in the .DAT field should be properly populated to reflect the basis for the redactions.

Format for Placeholder Documents

Because full families, parents and children (e.g., emails and corresponding attachments), should be produced together, if a document within a responsive family is fully withheld for privilege or non-responsiveness, a Bates-stamped, single page TIF placeholder indicating either “Document Withheld for Privilege” or “Document Withheld for Non-Responsiveness” should be included as the corresponding image for the withheld file. This information should also be reflected in the **Contains Slip Sheet** and **Slip Sheet Language** fields in the .DAT file. If a child document (e.g., email attachment) is produced as a placeholder, then the full family of the placeholder attachment must also be converted and only produced as Bates-stamped, single page images with associated text and metadata rather than in native format.

Email De-Duplication

Parties may globally de-duplicate stand-alone documents or entire document families using has value matching (such as MD5 or SHA-1 values).

Email Threading

For email documents, to the extent feasible, produce only the most-inclusive emails in a thread, plus any emails within that thread that contain an attachment or only the emails within that thread that contain a unique attachment.

Format for Use of Natively Produced Documents in Litigation

For documents produced in native format, the parties agree that for use at depositions, hearings, or trial, as exhibits to motions (or other filings or submissions to the court), in expert reports, or any other such similar situation, the party using such document originally produced in native format will convert the native file to Bates-stamped PDF such that each page of the PDF is marked with the Bates number assigned to the native file during production and, if appropriate, any other endorsement such as a confidentiality designation.

Confidential Documents

Unless otherwise agreed by the parties, confidential documents must be produced in the following manner:

- (i) Including the appropriate confidentiality designation in the file name;
- (ii) Including the appropriate confidentiality designation in the **Designation** field in the .DAT load file; and

- (iii) Providing confidential documents, along with their full families, in a separate confidential production volume.

METADATA FIELDS FOR ESI ON NEXT PAGE

Requested Metadata Fields for ESI

FIELD NAME	DESCRIPTION	EXAMPLE
Production Begin	Starting Bates number of file	NYCE00000001
Production End	Ending Bates number of file	NYCE00000005
Production Begin Family	Starting Bates number of family	NYCE00000001
Production End Family	Ending Bates number of family	NYCE00000010
Native Link	Hyperlink to native file	Z:\VOL001\NATIVES\00\NYCE00000001.doc
All Custodians	All custodians of the record, if global deduplication was applied during processing. A revised ALLCUSTODIANS field must be provided in the form of an overlay for any documents affected by new custodians added to the database post-production.	Doe, John;Smith, Mary;Robinson, Jane
File Path	Original path of the file	Path\Folder2\My Documents
File Name	Name of the file	My Meeting.doc
File Extension	Extension of the file	DOC
File Type	Classification assigned by the processing software	Microsoft Word Document
Title	Data stored in the title metadata field	Agenda for Weekly Meeting
Author	Data stored in the author metadata field	jdoe
Subject	Subject of the email or the data stored in the subject metadata field	Meeting Agenda
From	Email address and display name of the sender of the email	John Doe <jdoe@company.com>
To	Email address(es) and display name(s) of the recipient(s) of the email	Frank Smith <frank.smith@mycompany.com>;Jane Doe <jane.doe@mycompany.com>
CC	Email address(es) and display name(s) of the CC(s) of the email	Joseph Roberts <jroberts@company.com>;Mark Smith <msmith@company.com>
BCC	Email address(es) and display name(s) of the BCC(s) of the email	Joseph Roberts <jroberts@company.com>;Mark Smith <msmith@company.com>
Attachment Names	List of files attached to email	File 1.xls;File 3.zip
Date Sent	Sent date of the email	09/15/2012
Time Sent	Sent time of the email (12hr format)	3:30:25 PM
Date Modified	Last modified date of the file as captured by the original application or the last modified date of the file as captured by the file system	09/09/2012
Time Modified	Last modified time of the file as captured by the original application or the last modified time of the file as captured by the file system (24hr format)	9:30:30 AM
Importance	Importance property of email	High
Sensitivity	Sensitivity property of email	Confidential
MD5 hash	MD5 hash of file	D41D8CD98F00B204E9800998ECF8427E

Family Date	Sent date of the email or the last modified date of the parent document	09/15/2012
Family Time	Sent time of the email or the last modified time of the parent document (24hr format)	3:30:25 PM
Privilege Type	This field will indicate the reason for any redactions	ACC; AWP
Redaction Type	This field will indicate if the document contains a redaction	Privilege; PII; NR
Contains Slip Sheet	This field will indicate if the documents has been slip-sheeted	Yes
Slip Sheet Language	This field will indicate the language that appears on the slip-sheet	DOCUMENT WITHHELD FOR PRIVILEGE
Designation	This field will indicate any designations on the image besides the bates number	CONFIDENTIAL
Text Link	Hyperlink to text file	Z:\VOL001\TEXT\00\NYCE00000001.txt